

USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR MARKETING PURPOSES POLICY

RESPONSIBILITY: Privacy Official or Designee(s)

BACKGROUND:

In general, fees charged to incur a profit from the disclosure of Protected Health Information (PHI) are not allowed.

PHI for Sale – Sale of PHI generally means a disclosure of PHI by a covered entity or business associate where direct or indirect remuneration from or on behalf of the recipient of the PHI is made in exchange for the PHI.

Use of PHI for Marketing – From time to time, the BBHMF may want to inform patients of services or products that may be beneficial to them; however, it is important to respect the privacy of our patients, and recognize that we have a responsibility to avoid generating unwanted or unnecessary mail and other communications.

Under certain circumstances, it is permissible to use the names and addresses of the BBHMF patients to send them information about services and products available from the BBHMF. Under other circumstances, it is necessary to obtain written authorization from a patient before his or her name and address, or other PHI, may be used for marketing. This policy sets forth conditions designed to comply with pertinent federal privacy rules, and to assure that such communications are in our patients' best interest.

POLICY:

The use of protected health information will not be permitted for any and all marketing purposes conducted or on behalf of any state operated facilities or organization associated with such facilities without patient authorization.

1. As a general rule, the BBHMF is prohibited to use or disclose protected health information (PHI) for sale or marketing purposes unless a written authorization is obtained or an exception applies.
 - 1.1. HIPAA defines marketing as *making a communication about a product or service that encourages recipients of the communication to buy or use the product or service.*
 - 1.2. The Omnibus rule defines "Sale of PHI" as *a disclosure of PHI where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for PHI.*
2. Where applicable, the BBHMF will have obtained authorization from patients whose PHI will be used or disclosed for the communication, prior to sending the communication. When remuneration is involved, the authorization must specifically state this fact.

EXCEPTIONS:

3. Sale of PHI does not include disclosing PHI for the following purposes:
 - 3.1. For public health purposes.
 - 3.2. For treatment and payment purposes.
 - 3.3. For the sale, transfer, merger, or consolidation of all or part of the covered entity and related due diligence and health care operations.
 - 3.4. To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, where the only remuneration provided is by the covered entity to the business associate (or by the business associate to the subcontractor) for the performance of those activities.
 - 3.5. To an individual, when requested under the Right to Request Access or Accounting of Disclosures.
 - 3.6. Required by law.
 - 3.7. For research purposes, where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI for research purposes.
 - 3.8. For any other purpose permitted by HIPAA where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for the purpose, or a fee otherwise expressly permitted by other law.
4. Marketing uses and disclosures have several exceptions which do not require an authorization unless the BBHMF receives financial remuneration in exchange for making the communication:
 - 4.1. Treatment. Written authorization is not required to use a patient's PHI for purposes of treatment. This policy does not, in any way, limit the ability of physicians and other members of the BBHMF workforce to communicate with patients regarding their treatment. This policy does not limit their ability to discuss treatment options with patients, whether or not this involves encouraging the patient to use or purchase any service or product provided by the BBHMF or by anyone else, nor does this policy serve to limit in any way the ability of a physician, or other worker, to communicate in writing with a patient regarding the patient's treatment.
 - 4.2. Providing refill reminders or otherwise communicating about a drug or biologic that is currently being prescribed.

- 4.3. Case Management and Care Coordination. The BBHMF workers may use a patient's PHI to direct or recommend alternative treatments, therapies, health care providers, or settings of care to a patient, without obtaining a written authorization.
- 4.4. Health-related Products and Services provided by the BBHMF. The BBHMF workers may communicate with patients, orally or in writing, to provide them with information about health-related products and services that the BBHMF provides. The use of patient's PHI in these communications is not limited by this policy. Patient's authorizations are not required for this type of communication.
 - 4.4.1. Written authorization is required in order to use patient's PHI to communicate with them about health-related products and services provided by others, unless it is in the context of treatment, prescription refills, or case management and care coordination (paragraphs 3.1 through 3.3 above).
 - 4.4.2. Written authorization is required in order to use patient's PHI to communicate with them about products and services that are not health-related.
- 4.5. Network Participants. The BBHMF may use patient's PHI, without prior authorization from the patients, to communicate information to them regarding other entities with which BBHMF participates in a network (This applies to a health care provider network or a health plan network).
- 4.6. Health Plan Benefits. The BBHMF workers may use PHI of participants in any plan it operates, to communicate to them information about:
 - 4.6.1. Payment for products and services;
 - 4.6.2. Replacement benefits;
 - 4.6.3. Enhancements to benefits; and
 - 4.6.4. Health-related products or services available only to health plan participants that add value to, but are not part of, a plan of benefits
 - 4.6.5. (See EMPLOYEE HEALTH BENEFIT PLAN: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION).
- 4.7. Face-to-face. Written authorization is not required to communicate with patients face-to-face about products or services.
- 4.8. Gifts of nominal value. Written authorization is not required to use or disclose patient's PHI for the distribution of promotional gifts of nominal value.
- 5. The BBHMF may use patient's names and addresses purchased in community-wide mailing lists without obtaining patient's authorization. This is not considered PHI, since it is obtained from an independent source, unrelated to health care.

6. Protected health information may be disclosed to a third party to assist with communication made in accordance with this policy if the third party has executed a business associate agreement with the BBHMF (See the BBHMF DISCLOSURE OF PROTECTED HEALTH INFORMATION TO BUSINESS ASSOCIATES AND OTHER CONTRACTORS policy).
7. The BBHMF may not disclose patient's protected health information to another entity, in exchange for direct or indirect remuneration, without written authorization from those patients, if the other entity or its affiliate, will use the PHI for its own marketing purposes. This is true even if the other entity has executed a business associate contract with the BBHMF.
8. Newsletters. The BBHMF may use patient's PHI to address newsletters without obtaining the patient's authorization, as long as the newsletter contains only communications that fit the exceptions listed in paragraph 3 above.

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Victoria L. Jones, Commissioner, Bureau for Behavioral Health and Health Facilities